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JAMES H. McKENNEY,
Clerk.

Supreme Court of the United States.

OCTOBER TERM, 1903.

No. 76.

THE CLIPPER MINING COMPANY, PLAINTIFF IN ERROR,

vs.

THE ELI MINING AND LAND COMPANY ET AL.

MEMORANDUM.

TOWNSITE OF NORTH LEADVILLE VS. SEARL.

Where land in the vicinity of valuable mineral deposits is returned as mineral in character on the township plat, clear and positive proof of its non-mineral character can alone overcome the return of the Surveyor General.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *April* 17, 1880.

SIR: I have considered the case of The Townsite of North Leadville *vs.* A. D. Searl, *et al.*, involving certain tracts of

land in sections 23 and 24, town. 9 S., range 80 W., Leadville district, Colorado.

The only question at issue or raised, by the appeal, is, as to the character of the land, the townsite application being resisted on the ground that the tracts are valuable for minerals.

The undisputed facts are that the tracts were returned by the Surveyor General as mineral land, and that they are in the midst of, and in close proximity to, very valuable gold placers, and lode or carbonate mines producing silver.

But the testimony of witnesses who have worked or prospected the land for mineral, gold and silver, and who were introduced as expert miners, is conflicting. Some found gold in paying quantities, and unhesitatingly gave it as their opinion that the land is valuable for minerals and will pay well for mining purposes, while others failed to find such results or indications as to convince them that the tracts are valuable mineral land, and others unhesitatingly say that they have no value whatever for mining by any known process.

That the land contains valuable minerals hardly any one denies; but upon the question whether the minerals are in paying quantities, the opinions of the witnesses, based upon the results of actual prospecting and comparison of surface indications of those of the surrounding lands which are being profitably worked, are very conflicting; and the question arises whether the evidence is sufficient to overcome the presumption of the Surveyor General's return, and that raised by the fact of the proximity of known valuable mines. I think not.

After a consideration of all the testimony and of the arguments, both written and oral, I am of the opinion that the Surveyor General's return is not overcome by proof, and that the land should be held as valuable for minerals within the meaning of section 2318, of the U. S. Revised Statutes.

Your decision dismissing the application of the county judge to enter the tract as a townsite, and sustaining the Surveyor General's return, is affirmed.

C. SCHURZ, *Secretary.*

THE COMMISSIONER OF THE GENERAL LAND OFFICE.

7th Copp's Landowner, p. 36.